

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

ANTHONY DeFRANCO,
Plaintiff,

v.

WILLIAM WOLFE, et al.,
Defendants.

)
) No. CA-04-230-ERIE
) Magistrate Judge Baxter
) District Judge Cohill
)
)

MOTION TO SUPPLEMENT RECORD

Plaintiff moves this Honorable Court to consider the following information in consideration of the Defendants motion to dismiss, and to consider the information submitted in the case:

1. As the Court is aware, the Defendants transferred Plaintiff in retaliation for filing this complaint (Plaintiff has since been returned to SCI Albion, on 8/2/05).

2. While Plaintiff was housed at SCI Smithfield, the Institution staffed (voted) on whether Plaintiff required a Z code. It was indeed determined that Plaintiff required a Z Code status (see attached, Ex. "A", a request from Smithfield unit manager Campopiano saying Plaintiff required the Z Code primarily for his mental health and need of counseling). This staffing just occurred on or about April 27, 2005, where the superintendent approved the Z Code.

3. As the Court is aware, the Defendants at SCI Albion only removed his Z Code after he allegedly threaten a prison official. They have never offered an explanation why the Z Code was removed.

3. The superintendent at Albion (Defendant Brooks) sent Plaintiff a appeal decision regarding the retaliatory transfer and states that upon his return he will be housed according to his classification (attached, Ex. "B", Defendant Brooks reply, dated May 10, 2005). This

exhibit clearly states that Plaintiff will "be housed according to his (your) classification." See Ex. "B".

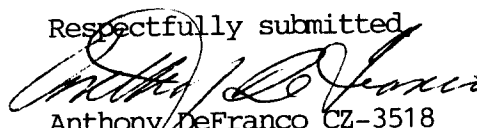
4. Plaintiff has been led to believe that SCI Albion will attempt to remove this Z Code as it harms their position in this matter. This would be an additional retaliatory action. If Plaintiff was just staffed a couple of months ago at SCI Smithfield, by professionals, including psychology, psychiatry, and shown to require the Z Code, he would require it at any Pa. D.O.C. Institution. This would amount to deliberate indifference (if taken away by Defendants). Defendant Brooks reply (Ex. "B") clearly states Plaintiff would be housed according to his classification upon his return to Albion. He was returned as a custody level 3, with a Z Code and is in a single cell currently.

5. Plaintiff asks the Court to take note of Defendant Barr's affidavit (DOC. ## 15-19), where he tells the Court that inmates are reviewed annually to see if the Z Code is still warranted and that only if "significant progress" is shown will it be removed (affidavit of Barr, dated Nov. 8, 2004). Plaintiff was recently staffed and given the Z Code status (this proves that he require it).

WHEREFORE, Plaintiff asks this Honorable Court to consider the information contained herein in its decision on Defendants motion to dismiss, and in the case record.

Date: 8/6/05

Respectfully submitted


Anthony DeFranco CZ-3518
10745 Route 18
Albion, Pa. 16475-0002

CERTIFICATE OF SERVICE
Service was made by US First
Class Mail to the Attorney
General's Office, 564 Forbes Ave.,
Pittsburgh, Pa. 15219, this date.

Form DC-135A

INMATE'S REQUEST TO STAFF MEMBER

Commonwealth of Pennsylvania
Department of Corrections

INSTRUCTIONS

Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.

1. To: (Name and Title of Officer)

Mr. Campopiano (Unit Manager)

2. Date:

4/27/05

3. By: (Print Inmate Name and Number)

Anthony DeFranco C2-3518

4. Counselor's Name

Mr. Zimmerman

5. Unit Manager's Name

Mr. Campopiano

6. Work Assignment

7. Housing Assignment

C/A 16

8. Subject: State your request completely but briefly. Give details.

*Mr. Campopiano,**Thank you for taking the time to stop at my cell this afternoon to let me know that the Institutional Staff have approved me for the 2-code. Would you be able to tell me the reason or reasons for the approval? and**I deeply appreciate your time.*

9. Response: (This Section for Staff Response Only)

*Primary reason was your continued need for Mental Health treatment and counseling*To DC-14 CAR only ☐To DC-14 CAR and DC-15 IRS ☐

Staff Member Name

F. CAMPOPIANO
Print*J. Campopiano U.M.*
Sign

Date

4/28/05

COMMONWEALTH OF PENNSYLVANIA
Department of Corrections
State Correctional Institution at Albion
(814) 756-5778
May 10, 2005

**SUBJECT: APPEAL TO SUPERINTENDENT
GRIEVANCE #112276**

TO: Anthony DeFranco
CZ-3518
SCI-Smithfield

FROM: Marilyn S. Brooks
Superintendent



I have reviewed the original grievance and the Grievance Officer's response.

I do not find an appeal on file for 112276. However, I will allow you to be returned to SCI-Albion in resolution of the grievance.

Your transfer back to SCI-Albion will be done as a routine transfer and will be done when it can be scheduled. In anticipation of property shipment, if you are over the allowable limit and it is shipped by means other than the DOC, payment for shipping will be your responsibility.

Upon return you will be housed according to your classification.

After thorough review and evaluation, I amend the Grievance Officer's decision.

MSB/ljm

cc: Deputy Harlow
Deputy Wilkes
Mr. Bryant
Superintendent's Assistant
DC-15
File

"Our mission is to protect the public by confining persons committed to our custody in safe, secure facilities, and to provide opportunities for inmates to acquire the skills and values necessary to become productive law-abiding citizens; while respecting the rights of crime victims"

EX. "B"

Anthony DeFranco CZ-3518
~~SCI x Smithfield~~
P. 10745 Route 18
Albion, Pa. 16475-0002

Honorable Susan Paradise Baxter
17 S. Park Row, A280
Erie, Pa. 16501

August 6, 2005

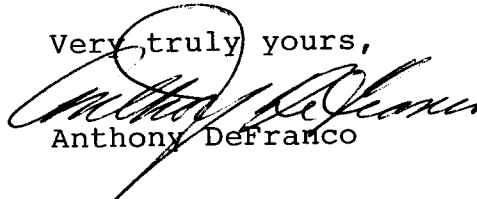
Re: DeFranco V. Wolfe, et al, 04-230E

Dear Judge Baxter:

Enclosed please find my motion to supplement the record. This is basically to notify you that I have been moved back to Albion with a formal Z Code, given to me by the professional staff at Smithfield (SCI). I suspect that the Defendant's will attempt to remove the Z Code as it may harm their position in this case (which would make an appalling reason to remove it). Please consider the enclosed motion in your decision to dismiss this case, and for the over-all record. Obviously if I require the Z Code at Smithfield, a Pa. D.O.C. facility, I need the Z Code no matter where I am located.

Lastly Your Honor, as I stated in my previous "letter brief", I never received your Report from the April 21, 2005 hearing. I ask that you have your staff check and verify if I signed for this (and who did); it is unfair that I not be able to review it to determine if I want to file objections to preserve my appellate rights. This just goes to show the Court that the Defendant's do tamper with our mail in attempts to hinder chances of winning (just like they refuse to respond to some grievances and requests). Your attention to this is very much appreciated. Thank you for your time and understanding. In closing, while Albion has taken me back it is still my contention that they violated my Constitutional rights, which harmed me, and I will have the amended/supplemental complaint before you very soon (per your approval to file it during the 4/21/05 hearing).

Very truly yours,



Anthony DeFranco

CC: enclosure
Attorney Bareford